

The Chairman, Mark Maxwell, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, June 17, 2003.

PRESENT: Christopher Fejes
Marcia Gies
Michael Hutson
Mark Maxwell
Matthew Vleck
Kenneth Courtney

ALSO PRESENT: Mark Stimac
Allan Motzny
Pam Pasternak

ABSENT: Matt Kovacs

Motion by Maxwell
Supported by Hutson

MOVED, to excuse Mr. Kovacs from this meeting for personal reasons.

Yeas: All – 6

MOTION TO EXCUSE MR. KOVACS CARRIED

ITEM #1 – APPROVAL OF MINUTES – MEETING OF MAY 21, 2003

Motion by Courtney
Supported by Gies

MOVED, to approve the minutes of the meeting of May 21, 2003 as written.

Yeas: All – 6

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

ITEM #2 – APPROVAL OF ITEMS #3 THROUGH #6

Motion by Courtney
Supported by Hutson

MOVED, that Items #4, #5 and #6 are hereby approved in accordance with the suggested resolutions printed in the Agenda Explanation.

Yeas: All – 6

MOTION TO APPROVE ITEMS #4, #5, AND #6 AS PRINTED IN THE AGENDA EXPLANATION CARRIED

ITEM #4 – RENEWAL REQUESTED. TROY SCHOOL DISTRICT, 4777

NORTHFIELD PARKWAY, for relief of the 4'-6" high masonry-screening wall required along the west side of off-street parking.

Mr. Stimac explained that the petitioner is requesting renewal of a variance granted by this Board for relief of the 4'-6" high masonry-screening wall required along the west property line of the site, which abuts residential zoning. This relief has been granted on a yearly basis since July 1988 based on the fact that this does not cause an adverse effect on properties in the immediate vicinity. This item last appeared before this Board at the meeting of June 2000 and was granted a three-year (3) renewal at that time. Conditions remain the same and we have no complaints or objections on file.

MOVED, to grant the Troy School District, 4777 Northfield Parkway, a three-year (3) renewal of relief of the 4'-6" high masonry screening wall required along the west property line of the site, which abuts residential zoning.

- Variance does not have an adverse effect to surrounding property.
- Conditions remain the same.
- We have no complaints or objections on file.

ITEM #5 – RENEWAL REQUESTED. CLARK RETAIL ENT, INC., 3400 ROCHESTER ROAD, for relief to maintain a 6' high fence in place of the 6' high masonry-screening wall required along the east and a portion of the north property line.

Mr. Stimac explained that the petitioner is requesting renewal of a variance granted by this Board to maintain a 6' high fence in place of the 6' high masonry-screening wall required along the east and a portion of the north property line. This variance has been granted on a yearly basis since 1985, based on the preference of the adjacent owners to have the wood fence and landscaping in lieu of the masonry wall. This item last appeared before this Board at the meeting of June 2000 and was granted a three-year (3) renewal at that time. Conditions remain the same and we have no complaints or objections on file.

MOVED, to grant Clark Retail Ent. Inc. 3400 Rochester Road, a three-year (3) renewal of relief to maintain a 6' high fence in place of the 6' high masonry-screening wall required along the east and a portion of the north property line.

- Conditions remain the same.
- We have no complaints or objections on file.

ITEM #6 – RENEWAL REQUESTED. THE LUTHERAN CHURCH OF THE MASTER, 3333 COOLIDGE, for relief to maintain a berm along the west side of off-street parking in lieu of the required 4'-6" high masonry screening wall.

ITEM #6 – con't.

Mr. Stimac explained that the petitioner is requesting renewal of a variance granted by this Board, for relief of the 4'-6" high masonry-screening wall required along the west property line. In 1976 permanent relief was granted to allow a landscaped berm along approximately 80' of the property line as an obscuring element. In 1981 parking was increased and the Board allowed this berm to be extended. This item last appeared before this Board at the meeting of June 2000 and was granted a three-year (3) renewal at that time. Conditions remain the same and we have no complaints or objections on file.

MOVED, to grant the Lutheran Church of the Master, 3333 Coolidge, a three-year (3) renewal of relief to maintain a berm along the west side of off-street parking in lieu of the required 4'-6" high masonry screening wall.

- Conditions remain the same.
- There are no complaints or objections on file.

ITEM #3 – RENEWAL REQUESTED. G.J. SLAGON & ASSOCIATES, 1000 JOHN R., for relief of the 6' high masonry-screening wall required along the east and south property lines.

Mr. Stimac explained that the petitioner is requesting renewal of a variance granted by this Board for relief of the 6' high masonry-screening wall required along the east and south property lines. The walls are required where this non-residentially zoned property abuts residential zoned property. This relief was originally granted in 1981, primarily due to the fact that the easterly portion of the property line has a retention pond adjacent to it and the south property line abuts the parking lot for the senior citizen complex. This item last appeared before this Board at the meeting of June 2000 and was granted a three-year (3) renewal at that time. Conditions remain the same and we have no complaints or objections on file.

Motion by Courtney
Supported by Hutson

MOVED, to postpone the request of G.J. Slagon & Associates, 1000 John R., for relief of the 6' high masonry-screening wall required along the east and south property lines until the meeting of July 15, 2003 to allow time to publish a Public Hearing, in order to consider making this a permanent variance.

Yeas: All – 6

MOTION TO POSTPONE REQUEST UNTIL THE MEETING OF JULY 15, 2003
CARRIED

ITEM #7 – VARIANCE REQUESTED. PPG INDUSTRIES, 5875 NEW KING, to maintain a landscaped berm in lieu of the 6' high masonry-screening wall required along the west property line by Section 39.10.01.

Mr. Stimac explained that the petitioner is requesting a variance for relief of the 6' high masonry-screening wall required along the west property line that abuts residential zoning. This relief was originally granted in 1988 based on the fact that the petitioner installed a berm in place of the wall and the adjacent property owners approved of the alternate screening. This item last appeared before this Board at the meeting of May 20, 2003 and was postponed to allow the Building Department to publish a Public Hearing in order to make this a permanent variance. Public hearing notices have now been sent to the adjacent property owners advising them of this consideration.

Mr. Russ Bischoff, Manager of Administration and Customer Service of PPG Industries, was present and brought in pictures which reflected the growth of the trees along the property line. Mr. Bischoff also stated that he thought this berm was aesthetically pleasing.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are no written approvals or objections on file.

Motion by Courtney
Supported by Vleck

MOVED, to grant PPG Industries, 5875 New King, a permanent variance to maintain a landscaped berm in lieu of the 6' high masonry-screening wall required along the west property line that abuts residential zoning as required by Section 39.10.01.

- Variance is not contrary to public interest.
- Variance does not have an adverse effect to surrounding property.
- Berm looks much nicer than a screening wall.

Yeas: All – 6

MOTION TO GRANT VARIANCE CARRIED

ITEM #8 – VARIANCE REQUESTED. MR. & MRS. GARY SHEREDA, 5231 CROWFOOT, for relief to construct a family room addition with a rear yard setback of 25.5' where 40' is required by Section 30.10.04.

ITEM #8 – con't.

Mr. Stimac explained that the petitioners are requesting relief of the rear yard setback to construct a family room addition. The site plan submitted indicates that the proposed family room addition would result with a 26.55 rear yard setback. Section 30.10.04 requires a 40' minimum rear yard setback in the R-1C Zoning District. This item first appeared before this Board at the meeting of April 15, 2003 and was postponed to allow the petitioners the opportunity to explore the possibility of reducing the size of this addition. At the meeting of May 21, 2003 the Building Department received a request from the petitioners asking once again that this item be postponed.

Mr. & Mrs. Shereda have now submitted a revised site plan, showing a smaller addition, which would result with a 32.55' rear yard setback.

Mr. & Mrs. Shereda were present and stated that they are asking for a 10' x 26' addition to the back of their home. Mr. Shereda stated that they had contacted two different contractors and the reason they need 10' is to make the addition wheelchair accessible. Mr. Shereda explained that they are the second house off the corner and indicated that many of the homes in the area have additions and swimming pools, and they wish to be able to enjoy their property. A storm drain is also at the rear of their property and Mr. Shereda stated that they are having a problem with bugs and mosquitoes and his elderly mother is afraid to go outside because of this condition. Mr. Shereda also said that the original patio is 31' x 20' and this request is now smaller than what was originally proposed.

Mr. Courtney asked if the Shereda's had checked their deed restrictions to determine if this addition could be added. Mr. Shereda said that they have restrictions regarding fences, sheds and antennas but does not believe there are any that would cover this addition. Mr. Courtney indicated that if there are deed restrictions in place they would not be able to put up an addition and the Homeowner's Association would enforce these restrictions.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are four (4) written approvals and three (3) written objections on file, which were received at the time of the original Public Hearing.

Mr. Hutson indicated that he did not feel that there was a hardship with the land, and because this is a large variance request, does not feel justified in supporting this request due to the fact that this addition would encroach on the neighbor behind them and the surrounding area. Mrs. Gies, Mr. Courtney and Mr. Vleck all agreed with Mr. Hutson's assessment.

ITEM #8 – con't.

Motion by Vleck
Supported by Gies

MOVED, to deny the request of Mr. & Mrs. Gary Shereda, 5231 Crowfoot, for relief to construct a family room addition with a rear yard setback of 32.55' where 40' is required by Section 30.10.04.

- Petitioner did not demonstrate a hardship with the land.
- Variance is contrary to public interest.
- Variance would have an adverse effect on surrounding property.

Yeas: All – 6

MOTION TO DENY REQUEST CARRIED

ITEM #9 – VARIANCE REQUESTED. MR. THOMAS DOOLEY, 2872 WATERLOO DRIVE, for relief of the rear yard setback to construct a family room addition with a 35.1' rear yard where 40' is required by Section 30.10.04.

Mr. Stimac explained that the petitioner is requesting relief of the rear yard setback to construct an addition to their family room. The site plan submitted indicates an addition to the family room with a proposed 35.1' rear yard setback. Section 30.10.04 requires a 40' minimum rear yard setback in the R-1C Zoning District. This item first appeared before this Board at the meeting of May 21, 2003 and was postponed to allow the petitioner to meet with his architect to determine if he can expand his family room and still comply with the Ordinance.

Mr. Dooley has now submitted a revised site plan indicating a proposed 10' addition with a 39.1' rear yard setback.

Mr. Dooley was present and stated that they had met with their architect and determined that although they could downsize their addition to 10', they would still require a variance for 9/10 of a foot. Mr. Dooley said that they could not make this addition any smaller and had talked to his neighbors and they did not oppose this addition.

Mrs. Gies asked if they had looked at the difference between 10' and 12'. Mr. Dooley said that he thought that the Board would be happier with 10' and had not talked to the contractors regarding a 12' room. Mr. Dooley also said that if the Board would grant him a 12' addition he would be happy to let his contractor know that this would be allowed.

ITEM #9 – con't.

Mr. Courtney asked Mr. Dooley if this was the smallest addition he could put on his home. Mr. Dooley said that if he had made this addition any smaller, it would no longer be economically feasible. Mr. Dooley also said that eventually they would like to add a second floor addition and felt that this would allow them to be closer to compliance with the Zoning Ordinance.

Mr. Fejes asked why Mr. Dooley wished to put on this addition. Mr. Dooley indicated that they would like to improve the layout of their home and give them more room.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There is one (1) written approval on file, which was received at the time of the original Public Hearing.

Mr. Hutson stated that although Mr. Dooley had not demonstrated a hardship with the land, he did not feel this request would create an adverse effect on surrounding property due to the fact that it was only for 9/10 of a foot.

Motion by Hutson
Supported by Courtney

MOVED, to grant Mr. Thomas Dooley, 2872 Waterloo Drive, for relief of the rear yard setback to construct a family room addition with a 39.1' rear yard setback where 40' is required by Section 30.10.04.

- Variance request is minimal.
- Variance will not have an adverse effect to surrounding property.
- Variance is not contrary to public interest.

Yeas: All – 6

MOTION TO GRANT VARIANCE CARRIED

ITEM #10 – VARIANCE REQUESTED. MR. & MRS. RICK HOWARD, 2051 E. BIG BEAVER, for relief to have a day care center for 145 children with 16,637 square feet of outdoor play space where 21,750 square feet are required by Section 10.30.03.

Mr. Stimac explained that the petitioners are requesting relief of the Zoning Ordinance to construct additional parking area at the existing day care center at 2051 E. Big Beaver. Section 10.30.03 of the Troy Zoning Ordinance requires that a minimum of 150 square feet of outdoor play area be provided for each child cared for at the center. For the 145-child capacity that is proposed, a minimum of 21,750 square feet of outdoor

ITEM #10 – con't.

play space is required. The site plan submitted indicates that only 16,637 of square feet of outdoor play space are proposed.

This item last appeared before this Board at the meeting of May 20, 2003 and was postponed to allow the Board to determine if certain conditions could be imposed on this variance request; and, to allow the petitioner the opportunity to seek a text amendment to address this condition.

Mr. Maxwell asked Mr. Motzny to explain to the Board what his findings were on this matter. Mr. Motzny said that he had done quite a bit of research and found that current court interpretations would allow for a condition to be placed on the variance that only a certain number of mobile children would be allowed to use the play area.

Mr. Maxwell then asked how many parcels were involved in this variance request. Mr. Stimac said that the property is separated, and when the construction of the parking lot begins the Building Department would ask that these two parcels be combined. Mr. Stimac also said that there is a portion of the second parcel of land that the petitioners own but do not wish to develop at this time.

Mr. Courtney asked if a variance would be required if all of these parcels were combined. Mr. Stimac said that if they did not make one of the areas additional play space, a variance would still be required.

Mr. & Mrs. Howard were present and stated that they did not have anything further to add except that the portion of the second piece of property was not considered as part of the day care center. Mr. Maxwell asked if they would consider adding this property as part of the play area. Mrs. Howard said that several trees would have to be removed and she did not think it would be economically feasible to put a play area in this section.

Mr. Fejes asked how many children would be in the play area at one time. Mrs. Howard indicated that at total capacity, she has 145 children in the day care center, 38 of which are infants and do not use the play area. Mr. Fejes then asked if one group of children moves out before another group moves in. Mrs. Howard said that basically that is correct and also that they have three (3) classrooms and rotate the children in these classrooms on the play area, so all three classrooms are not outside at the same time unless there is an emergency. Mr. Fejes then asked what Mrs. Howard's intentions were regarding the remainder of the second lot. Mr. Howard said that right now they do not have any definite plans for that property they own, and Mrs. Howard said that they want to hold on to because it is commercial property and would appreciate in value.

Mr. Fejes then asked if the variance would expire if the petitioners sold the property. Mr. Stimac explained that the variance runs with the land, and new owners would have to abide by whatever this Board granted. Mr. Fejes then asked what the repercussions

ITEM #10 – con't.

would be to the City if this property were sold. Mr. Stimac said that if the maximum number of children allowed for this facility was 145, a new facilitator would have to abide by the same conditions. Mr. Stimac also stated that the petitioners are asking for a reduction in the allowable amount of play space based on the fact that they would be limited to the maximum number of children that would be using the play space.

Mr. Maxwell then asked what would happen if a future operator came in and expanded the area. Mr. Stimac explained that this play space allows for 111 children, and if a future user came in and limited the facility to 111 children the variance would no longer be required. Mrs. Howard said that the State comes in and measures each classroom and determines the maximum number of children allowed for each area. Mrs. Howard also said that anyone using this facility would be limited to 145 children.

Mr. Vleck asked what agency monitors this facility. Mrs. Howard stated that it is monitored by the Department of Social Services. Mr. Vleck then asked if each child had to be registered with the Department of Social Services. Mrs. Howard explained that before the day care center is opened the State comes out and checks each facility, and then does random checks to make sure that these centers are not over capacity. Mr. Vleck then asked if they go through the paper work. Mrs. Howard said that they come in to each classroom and do a head count and occasionally go through the paper work.

Mr. Courtney said that these are State requirements and now it would be up to the City to regulate the proper number of children in this facility. Mr. Vleck said that he was not sure how this number would be maintained or tracked by the City. Mr. Stimac said that based on his experience, the State Department of Social Services will dictate the interior size of the facility based on the number of students, but based on the Fire Code, they could put in a larger number of students than the State would allow; however, based on the exterior area of the building the City Codes are more restrictive than what the State is. Mr. Stimac also said that trying to determine the age of children allowed in a day care center is a step that is not currently enforced.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are no written approvals or objections on file.

Motion by Courtney
Supported by Hutson

ITEM #10 – con’t.

MOVED, to deny the request of Mr. & Mrs. Rick Howard, 2051 E. Big Beaver, for relief to have a day care center for 145 children with 16,637 square feet of outdoor play space where 21,750 square feet are required by Section 10.30.03.

- Petitioner did not demonstrate a hardship with the land.
- Believes petitioners should file to have the City Ordinance changed with the Planning Commission and City Council.

Mr. Maxwell stated that he feels that the petitioner meets the intent and spirit of the Ordinance and feels that the variance should be granted with the condition that the play space be limited to 110 children. Mr. Maxwell further stated that he feels that there are enough checks and balances in place that would help to determine the petitioner complying with the conditions of the variance.

Mr. Hutson said that he feels that the petitioner has an option to comply with the Ordinance by adding the extra parcel, but doesn't want to do that because of the possibility of financial gain. Mr. Hutson further stated that he feels that enforcement of the conditions of the variance would be very difficult. Mr. Hutson stated that the variances that are granted regarding setbacks have not called in the veracity of the Ordinance; however, this variance is calling for a fundamental change in the Ordinance. Mr. Hutson also stated that he feels the petitioner should go before the Planning Commission and City Council.

Mr. Vleck said that he believes that he would support the variance request and thinks that the capacity limit could be enforced by the Code Enforcement Department.

Mr. Courtney stated that this is the first day care center to ask for a variance and believes they are opening the door for other centers to request a variance, and believes that there should be a Zoning Ordinance change.

Mr. Fejes said that he felt that a condition of the variance would be that only a certain number of children would be allowed in a play area and that it would meet the spirit of the Ordinance. Mr. Courtney said he did not agree, and still feels that the petitioner should request a change in the Ordinance.

Mr. Maxwell then asked for a vote on the motion to deny this request.

Yeas: 3 – Courtney, Gies, Hutson
Nays: 3 – Fejes, Maxwell, Vleck

MOTION TO DENY REQUEST FAILS

Motion by Vleck
Supported by Gies

ITEM #10 – con't.

MOVED, to grant Mr. & Mrs. Rick Howard, 2051 E. Big Beaver, relief to have a day care center for 145 children with 16,637 square feet of outdoor play space where 21,750 square feet are required by Section 10.30.03.

- Facility be limited to 110 children over the age of 2 ½ years old.
- Variance is not contrary to public interest.
- The Code Enforcement Division will monitor age and number of children.

Yeas: 4 – Fejes, Gies, Maxwell, Vleck

Nays: 2 – Courtney, Hutson

MOTION TO GRANT VARIANCE CARRIED

ITEM #11 – VARIANCE REQUESTED. TONY V'S SUNROOMS & SPAS, REPRESENTING SERAGIO LOVISA, 929 PORTSMOUTH, for relief to construct a rear yard addition with a 35' rear yard setback where 45' is required by Section 30.10.02.

Mr. Stimac explained that the petitioners are requesting relief of the rear yard setback to construct an addition. The site plan submitted indicates a three-season room addition on the rear of the home with a proposed 35' rear yard setback. Section 30.10.02 of the Zoning Ordinance requires a 45' minimum rear yard setback in the R-1B Zoning Districts.

Tony Rea from Tony V's Sunrooms & Spas was present and stated that there is an existing patio that is 12' x 18' and asked if the City had changed the setback requirements recently. Mr. Stimac stated that the City of Troy has five (5) different residential zoning classifications and each one has different lot sizes and therefore different setbacks. Mr. Stimac said that this home is located in an R-1B Zoning Classification and has had a 45' setback since it was originally developed.

Mr. Rea said that this lot is different in shape and in order to comply with Ordinance, the only addition allowed would be 2'. Mr. Rea further stated that even with a 10' addition, a variance would be required for 8'.

Mr. Maxwell asked if any other options were available as to the location of this addition and Mr. Rea said that they could put the addition coming off of the family room. Right now the addition is coming off the bedroom to make access easier for Mr. Lovisa. Mr. Rea said that the reason they want the addition in this area is to allow Mr. Lovisa to go in and out without requiring assistance. Mr. Rea then asked if the easement that is located on the property would have a bearing on where the addition is located. Mr. Stimac explained that setbacks are determined from the property lines regardless of where easements are located.

ITEM #11 – con't.

Mr. Rea then asked what the front yard setback is and Mr. Stimac said that in the R-1B Zoning District the front yard setback is 40'.

Mr. Courtney asked for clarification on where this addition would be coming off of this home. Mr. Rea said that it was off the bedroom, and Mr. Courtney asked if the variance request would be smaller if the addition were to come off the family room. Mr. Rea said he thought it would only be a couple of feet less.

Mr. Fejes asked for clarification on the owner of the property. Mr. Rea said that although Mr. Lovisa owns the home, his daughter and her husband lived there and he moved in with them in order for them to take care of him, due to the fact that he is incapacitated to the point where he cannot dress or feed himself. Mr. Rea further stated that they were planning to put in a hot tub in order for Mr. Lovisa to be able to relax. Mr. Rea also said that no matter where they put the addition a variance would be required. Mr. Fejes then asked where the family room was located and Mr. Rea said it is on the other side of the back of the home. Mr. Rea also said that he thought if the sunroom were added on that side of the home the variance request would be smaller.

Mr. Vleck asked if a smaller sunroom were feasible. Mr. Rea said that the reason they wanted a 12' room was to put in a larger hot tub, but in fact could downsize the addition and put in a smaller hot tub. Mr. Rea said they could make the room 10' if they had to. Mr. Rea said they he thought perhaps they could put in a room coming off of the family room, which would only require a 4' or 5' variance.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are two (2) written approvals on file, one of which is Mr. Lovisa's. There are no written objections on file.

Motion by Courtney
Supported by Vleck

Moved, to postpone the request of Tony V's Sunrooms & Spas, representing Seragio Lovisa, 929 Portsmouth, for relief to construct a rear yard addition with a 35' rear yard setback where 45' is required by Section 30.10.02 until the meeting of July 15, 2003.

- To allow petitioner to determine if a 10' addition could be put on the house.
- To allow petitioner to explore the possibility of adding this addition to the family room, which would result in a lesser variance request.

Yeas: All – 6

ITEM #11 – con't.

MOTION TO POSTPONE THIS REQUEST UNTIL THE MEETING OF JULY 15, 2003
CARRIED

ITEM #12 – VARIANCE REQUESTED. TONY GALLO OF CAR WASH BUILDERS, INC., 1350 LIVERNOIS, for relief to convert an existing commercial building to a car wash with 1,987 square feet of countable landscaping where 3,993 square feet of landscape is required by Section 39.70.04.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to convert an existing commercial building at 1350 Livernois to a car wash. Section 39.70.04 of the Zoning Ordinance requires a minimum of 3,993 square feet of countable landscaping be provided on a site this size. The site plan submitted indicates that only 1,987 square feet of countable landscaping will be provided.

Mr. Courtney asked if the landscaping requirement would be met if the back of the property were landscaped. Mr. Stimac explained that countable landscaping has to take place in either the front or side yard of a property. Anything that is landscaped behind the front of the building is not considered as countable landscaping.

Mr. Hutson asked if this request had gone to the Planning Commission. Mr. Stimac indicated that they had gone to the Planning Commission and the Planning Commission made the stipulation that they appear before the Board of Zoning Appeals to request a reduction in landscaping.

Mr. Gallo was present and stated that they wished to take over a vacant building on Livernois and convert into a fully automated car wash system. Mr. Gallo said that they are trying to comply as best they can with the property they have. Due to the fact that the lot is 60' x 645' deep, they are unable to put in landscaping in the front yard setback. Mr. Gallo indicated that they had gone before the Planning Commission and proposed to landscape the part of the property they are developing, which is approximately 19,500 square feet of space and are proposing approximately 1,980 square feet of landscaping. The other option proposed to the Planning Commission was that they dispose of the property to the rear and then they only own 19,500 square feet and therefore they would meet the landscape requirements. Mr. Gallo stated that they had approached Kmart to negotiate a trade for the property to the north of this building by trading the rear of their property for the 25' in front. If they are successful in this trade they could provide as much landscaping as possible. Mr. Gallo also said that Kmart has indicated to them that they would be happy to take the rear property, but are unwilling to give up the 25' in front.

Mr. Courtney asked what was proposed for this building. Mr. Gallo indicated that they plan to a major reconstruction of this building by taking this facility down to the footings, while still utilizing whatever improvements they can. Mr. Gallo also said that they

ITEM #12 – con't.

needed to move the building by one foot as it encroaches on the Kmart property. Mr. Gallo also said that this building is setback 100' from the front property line.

Mr. Hutson clarified the fact that if the petitioner were to be able to trade the rear of this property for the 25' of the front of Kmart's they would then comply with the landscape requirement. Mr. Gallo confirmed that this was correct and Mr. Hutson stated that he felt that this was absurd to expect the petitioner to donate the land in the back in order to meet the requirement.

Mr. Courtney asked if they planned to get rid of the property in the rear. Mr. Gallo stated that they would like to retain ownership of this property, and if they receive their variance, they would then approach the neighbor to the north and try to negotiate a trade.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are no written approvals or objections on file.

Motion by Vleck
Supported by Courtney

MOVED, to grant Tony Gallo of Car Wash Builders, Inc., 1350 Livernois, relief to convert an existing commercial building to a car wash with 1,987 square feet of countable landscaping where 3,993 square feet of landscape is required by Section 39.70.04.

- If petitioner retains the property at the rear of this lot, this area would be cleaned up and maintained.
- Variance would not have an adverse effect to surrounding property.
- Absent a variance, conformance would be unnecessarily burdensome.
- Variance is not contrary to public interest.

Yeas: All – 6

MOTION TO GRANT VARIANCE CARRIED

ITEM #13 – VARIANCE REQUESTED. PATIO ENCLOSURES ON BEHALF OF MR. & MRS. T. ZIMCOSKY, 1744 PICADILLY DR., for relief to construct a porch enclosure with a 40' rear yard setback where 45' is required by Section 30.10.02.

ITEM #13 – con't.

Mr. Stimac explained that the petitioners are requesting relief of the rear yard setback to construct a porch enclosure. The site plan submitted indicates a rear porch enclosure with a proposed 40' rear yard setback. Section 30.10.02 requires a 45' rear yard setback in the R-1B Zoning District.

Mr. Courtney asked if there was an existing enclosure in this area and Mr. Zimcosky stated that there is a deck and a high fence that encloses the deck.

Mr. & Mrs. T. Zimcosky were present and stated that they have a unique configuration to their lot due to the fact that they are located on a cul-de-sac, which moves their home farther back than other homes in the area. Mr. Maxwell asked if they were planning to cover the existing deck. Mr. Zimcosky stated that presently they plan to use the flooring of this deck as the floor for this new sunroom.

Mr. Courtney asked what would happen to the existing fence and Mr. Zimcosky stated that the fence would come down.

Mr. Hutson asked if the configuration of the lot affect this house as to the setback. Mr. Stimac explained that because it is on a cul-de-sac the setback line follows the circle and this home does sit farther back than other homes around it.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There is one (1) written approval on file. There are no written objections on file.

Motion by Fejes
Supported by Hutson

MOVED, to grant Patio Enclosures on behalf of Mr. & Mrs. Zimcosky, 1744 Picadilly Drive relief to construct a porch enclosure with a 40' rear yard setback where 45' is required by Section 30.10.02.

- Home is located on an odd shaped lot due to the fact that it is on a cul-de-sac.
- Variance is not contrary to public interest.
- Variance does not cause an adverse effect to surrounding property.
- Variance applies only to the property described in this request.

Yeas: All – 6

MOTION TO GRANT VARIANCE CARRIED

ITEM #14 – VARIANCE REQUESTED. DANIEL LEEBOVE, OLYMPUS CORPORATION, 141 & 153 CHOPIN (PROPOSED ADDRESSES), for relief to split a parcel of property resulting in two parcels that are 7,200 square feet each where a 7,500 square foot minimum lot size is required by Section 30.10.06.

Mr. Stimac explained that the petitioner is requesting relief to construct two new houses. The site plan submitted indicates demolishing the existing house at 139 Chopin and splitting the property into two 60' wide lots. Each proposed lot would have only 7,200 square feet of area. Section 30.10.06 of the Zoning Ordinance requires a 7,500 square foot minimum area for lots in R-1E Zoning Districts.

Mr. Leebove was present and stated that he has owned this property for the last four (4) years and has used it as a rental property. This property has become vacant and now he would like to split this lot and put two homes on the property. Mr. Leebove pointed out that he is a builder in this area and feels that these homes would improve the area. Mr. Leebove also said that due to the fact that the neighbors' garages are setback on the adjoining property, he does not feel that he can approach them to purchase extra property.

Mr. Maxwell asked about the chart, which was put into the packets. Mr. Leebove explained that he had color coded the different lots to indicate which homes were on 40' lots, 60' lots, and the lots that he is requesting the variance on.

Mr. Courtney asked if there were any homes in the area that complied with the Ordinance. Mr. Stimac said that from this chart he would assume that the majority of the lots that were not colored in would probably comply with the Ordinance. Mr. Stimac also said that this subdivision was platted in the 1920's, and that the lots were 40' wide x 120' deep. Mr. Stimac also indicated that by today's standards, these lots would be considered smaller than what is now required to meet minimum lot standards.

The Chairman opened the Public Hearing.

Nancy McDermott, 160 Chopin stated that she had purchased her home in this area because she liked the character of the homes and the different size lots, and is also concerned about the removal of 3 or 4 mature trees. Ms. McDermott is concerned that traffic will increase with the construction of these homes and does not believe that there is a hardship upon which to base a variance. Ms. McDermott objects to this variance request.

Andrew Aird, 165 Chopin stated that he lives right next door to this property. Mr. Aird does not want to see these homes built and then become rental properties. Mr. Aird also said that he has an 80' lot and his home sits to one side. Mr. Stimac explained that Mr. Aird has a double lot. Mr. Stimac further explained that Mr. Leebove owns three 40' lots. Mr. Aird also expressed concern over what type of house would be built on these lots and how far back from the front property line these homes would be placed. Mr. Stimac explained that the petitioner had submitted plans, which indicated a 5' setback

ITEM #14 – con't.

from Mr. Aird's property and 26' from the front property line to the face of the garage where 25' is required, and the home to the west of this property is located approximately 29' from the front property line. Mr. Aird then asked how far this home would be located from the other neighbor, and Mr. Stimac said it would be approximately 10' from the side property line.

Mr. Vleck stated that they are not approving the site plan, the Board is just approving the fact that Mr. Leebove can put two homes on this lot.

Mr. Aird asked if the City would monitor the distance from the property line for the location of each home. Mr. Maxwell explained that the Board is only there to grant a variance to allow two homes to be built on this lot. Mr. Stimac stated that the house envelope shown on the proposed plan submitted by Mr. Leebove does comply with the Ordinance. Mr. Stimac also indicated that perhaps the Board could impose a condition on the variance, which would center the homes on the lot. Mr. Aird stated that he does not have a problem with this variance request as long as the property does not revert to rental property.

No one else wished to be heard and the Public Hearing was closed.

There are two (2) written approvals on file. There is one (1) written objection on file.

Mr. Hutson stated that these lots were platted many years ago and the City has increased the square footage of homes, and believes that we are going in the wrong direction by putting larger homes closer together.

Mr. Courtney said that he thinks that the Planning Commission and City Council did a lot of work on these lots, and believes that this part of the Ordinance should be followed.

Mr. Maxwell asked if Mr. Leebove had any response to the people that had spoken against this request. Mr. Leebove said that he would be more than willing to center the homes on these lots, if that is what the Board requires. Mr. Leebove also said that he lives in the area and these homes are not being built as rental homes.

Mr. Vleck said that usually he would agree with his colleagues, however, he thinks in the long run these homes would create an improvement to the area. Mr. Vleck also said that he would be more concerned that a single home could potentially decline the character of the neighborhood.

Mr. Maxwell stated that he feels this is a very small variance request.

Motion by Vleck
Supported by Gies

ITEM #14 – con't.

MOVED, to grant Daniel Leebove, Olympus Corporation, 141 & 153 Chopin (proposed addresses), for relief to split a parcel of property resulting in two parcels that are 7,200 square feet each where a 7,500 square foot minimum lot size is required by Section 30.10.06.

- A minimum of 7.5' side yard setbacks will be provided.
- Variance is minimal and is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.

Mr. Courtney asked if the motion could be amended to require 10' setbacks abutting the existing neighbors on the east and west sides. Mr. Vleck and Mrs. Gies agreed with the amendment. Therefore, the motion would include the following conditions and findings:

- A minimum of 10' side yard setbacks will be provided adjacent to the existing homes to the east and west.
- Variance is minimal and is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.

Yeas: 4 - Maxwell, Vleck, Fejes, Gies

Nays: 2 – Courtney, Hutson

MOTION TO GRANT REQUEST CARRIED

ITEM #15 – VARIANCE REQUESTED. ITALY AMERICAN ON BEHALF OF MR. & MRS. MARK STEPHENSON, 3899 WOODMAN, for relief to construct a roof over an existing uncovered patio with a 32.85' rear yard setback where a 45' foot rear yard setback is required by Section 30.10.02.

Mr. Stimac explained that the petitioner is requesting relief to construct a roof over an existing uncovered patio. The site plan submitted indicates a 32.85' rear yard setback to the proposed covered patio. Section 30.10.02 requires a 45' minimum rear yard setback in a R-1B Zoning District.

Mr. & Mrs. Mark Stephenson were present and stated that they know they are requesting a substantial variance, but their lot is irregularly shaped and the proposed roof would come out of the family room. Mrs. Stephenson also said that there is a brick wall that extends 2' past the patio. Mrs. Stephenson explained that they have two young children, one of which has special needs, which include vision impairment and requires physical therapy several times a week. Mrs. Stephenson said that they would like to get their older son outside and this is very difficult due to the condition of their baby. Mr. Stephenson said that they do not intend to enclose the patio at all, all they are asking for is protection for their children from the elements. Mrs. Stephenson said this roof would only require two (2) posts and would not be obtrusive to the surrounding

ITEM #15 – con't.

neighbors. Several of the neighbors support this request and Mrs. Stephenson had provided copies with their signatures indicating approval.

Mr. Maxwell asked for a description of what type of structure would be installed at this home. Mrs. Stephenson explained that all they are asking to do is put a roof over the existing deck and said that because of the way the home is situated there is nowhere else to put this roof.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are five (5) written approvals on file. There are no written objections on file.

Mr. Hutson expressed concern over the fact that eventually someone would come back to the Board and request that this area be enclosed, which would require another variance.

Mr. Fair from Italy American also pointed out that based on the drawings submitted, they are planning to add a dormer to this home and all construction will take place at the rear of the home. Mr. Fair further stated that the dormer and this proposed roof will be consistent with this construction. Mr. Fair also said that the Stephenson's couldn't enclose this area and have no intentions of doing so.

Mr. Maxwell asked where the roof was going to be placed and Mr. Fair said that it would go over the existing patio and no further. Mr. Maxwell indicated that this was a substantial variance request. Mrs. Stephenson said that she thought that due to the fact that the deck and wall were in place, these structures would have required variances due to the fact that they encroach into the rear yard setback. Mr. Stephenson said that the deck goes over the cement slab approximately 2 ½'. Mr. Stimac explained that an uncovered, unenclosed deck or patio can encroach into the rear yard setback 15'.

Mrs. Stephenson said that in order to put in the proper supports, you would have to go into the existing slab and then add another deck and the cost would be exorbitant.

Mr. Vleck asked if they had considered a retractable awning. Mr. Stephenson said that they have and the cost is between \$4,000 and \$8,000, and companies will only guarantee them for one year. Mr. Stephenson indicated that without this variance they would probably move in order to find a home that would have some type of coverage for their child. Mr. Vleck said that the Board is very sympathetic to their plight; however, he does not see a hardship with the land.

Mr. Maxwell asked if there were any options available which would change the amount of the variance request. Mr. Fair said that if he makes the structure smaller, he would have to demo the entire concrete floor and the cost would be very high, and he would

ITEM #15 – con't.

still encroach in the rear setback. Mr. Fair also said that he is not going to enclose this area.

Mr. Stimac asked if the existing slab had footings under it. Mr. Fair said that it did not and that was the reason they wished to go past the cement slab and put in the posts. Mr. Stimac then asked if they could saw cut the existing slab 2' and then put in the posts. Mr. Fair said that there is an existing structure in place and does not feel it would be correct to cut into this slab.

Mr. Courtney asked why they couldn't pull the posts in closer and Mr. Fair said if he did that he would have to cut into the existing concrete and he did not wish to do this.

Mr. Fair said that he did not feel the roof over this patio would fit with the dormer addition that is planned.

Mr. Vleck again stated that he is very sympathetic with the petitioners, however, because this is a very large variance request, he would not be able to support this request.

Motion by Vleck
Supported by Gies

MOVED, to deny the request of Italy American on behalf of Mr. & Mrs. Mark Stephenson, 3899 Woodman, for relief to construct a roof over an existing uncovered patio with a 32.85' rear yard setback where a 45' rear yard setback is required by Section 30.10.02.

- Petitioner did not demonstrate a hardship with the land.
- Variance would be contrary to public interest.
- Variance would have an adverse effect to surrounding property.

Yeas: All – 6

MOTION TO DENY REQUEST CARRIED

There was some discussion after the motion regarding a plan that could come back to the Board. Mr. Maxwell suggested that they contact the Building Department to determine if an alternative plan is available. Mr. Fair asked how much of a change would be required to come back to the Board of Zoning Appeals and Mr. Maxwell stated that standard practice indicated that it would have to be at least a 10% difference in order to be heard as a new request by the Board.

ITEM #16 – VARIANCE REQUESTED. CARL GUNDERSEN, 2775 RED FOX TRAIL, for relief of the Zoning Ordinance to construct a detached garage, which will be located partially in a side yard where Section 40.57.03 limits the location of accessory buildings to a rear yard location.

Mr. Stimac explained that the petitioner is requesting relief to construct a detached garage. The site plan submitted indicates that the proposed detached garage is partially in a side yard. Section 40.57.03 of the Zoning Ordinance prohibits the location of an accessory building in any yard except a rear yard.

Mr. Gundersen was present and stated that they wished to add this garage in order to use for extra storage and in the side yard there is a 10' brick wall. Mr. Gundersen further explained that the garage will have a brick veneer and will connect to the existing 5' of this brick wall so that it will look like one structure. Mr. Gundersen said that if he has to go back 5 ½' he would have to remove very large lilac bushes and believes that this would create an eyesore. Mr. Maxwell asked if it would be necessary to remove an existing large mature tree, and Mr. Gundersen said that the footings would be dug so close to the tree that he would probably lose it.

Mr. Courtney asked what the current garage is used for. Mr. Gundersen said that it holds two cars, woodworking equipment, a garden tractor and he would like to add this extra building in order to open up some space in the attached garage. Mr. Gundersen also said that he does not like a shed and does not want to put one in.

The Chairman opened the Public Hearing.

Mr. James Powers, 2759 Red Fox Trail, which is next door to Mr. Gundersen. Mr. Powers said that they had purchased the property in 1967 and is worried about the encroachment of other structures. Mr. Powers said that they like the fact that the area has side entrance garages and wide open spaces. Mr. Powers said at least if a shed went up it would be at the rear of the property and is concerned that this garage will detract from the character of the neighborhood. Mr. Powers also indicated that he did not believe Mr. Gundersen would use this space for cars, but believes he would use it as a machine shop. Mr. Powers believe that the original Ordinance should be changed in order to put this structure in the side yard. Mr. Maxwell said that if he moved it back 5 ½', Mr. Gundersen would be able to construct this garage without a variance. Mr. Powers said that they have trouble with drainage in the area and is also concerned that more construction will create more problems.

Mr. Vleck asked where Mr. Powers' property was located, and Mr. Powers stated that he was directly east.

Mr. Courtney asked if Mr. Powers had a preference as to the location of this structure and Mr. Powers said he would rather not have it in at all, however, if necessary he would like it constructed where Mr. Gundersen is requesting.

ITEM #16 – con't.

No one else wished to be heard and the Public Hearing was closed.

There are four (4) written approvals on file (one from owner of property). There is one (1) written objection on file.

Mr. Courtney asked if a variance would be required if this structure was put in the back yard. Mr. Stimac said that Mr. Gundersen could back 5 ½' and comply with the Ordinance, and Mr. Gundersen said if he had to go back 5 ½' he would not build. Mr. Stimac asked if there were deed restrictions regarding detached garages and Mr. Gundersen said that he is not aware of any. Mr. Stimac suggested that this structure could be moved over 10' and a variance would not be required because it was an attached garage rather than a detached garage.

Mr. Maxwell asked why Mr. Gundersen would not want an attached garage. Mr. Gundersen said that he did not think it would look good, he would probably lose the large mature tree and believes access would be very difficult.

Mr. Vleck also said that if they were going to dig footings near the existing tree, there would be a good chance that they would damage the roots of the tree. Mr. Gundersen also said that if he went back 5 ½', he would probably have to add 30 yards of fill.

Mrs. Gies asked if there was an active Homeowners Association. Mr. Gundersen said he was not aware of an Association. Mrs. Gies and Mr. Vleck both cautioned Mr. Gundersen to make sure that there are no deed restrictions that would prohibit the construction of a detached garage. Mr. Gundersen said that even if there is a Homeowners Association and believes that any deed restrictions should be changed.

Motion by Courtney
Supported by Gies

MOVED, to grant Carl Gundersen, 2775 Red Fox Trail, relief of the Zoning Ordinance to construct a detached garage, which will be located partially in a side yard where Section 40.57.03 limits the location of accessory buildings to a rear yard location.

- Variance is not contrary to public interest.
- Variance will cause less of an infringement to neighboring property.
- Variance applies only to the property described in this application.

Yeas: All – 6

MOTION TO GRANT VARIANCE CARRIED

Mr. Maxwell asked Mr. Vleck if the petitioner for 2051 E. Big Beaver had ever applied for a Zoning Ordinance text amendment. Mr. Vleck said that they have not, and due to the fact that they received their variance, he did not believe that the Planning Commission would spend a lot of time researching this item. Mr. Maxwell then asked Mr. Vleck to suggest to the Planning Commission that they review the Ordinance regarding the amount of play space area for each child.

The Board of Zoning Appeals meeting adjourned at 10:18 P.M.

MS/pp